

**Introduced by Senator Bates**

February 27, 2015

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An act to amend Section 1091.5 of the Government Code, relating to public officers.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 704, as introduced, Bates. Public officers and employees: conflict of interest.

The Political Reform Act of 1974 establishes the Fair Political Practices Commission as the agency responsible for enforcing the act. The act authorizes the Commission to issue an opinion or advice to a person with respect to that person's duties under the act, as specified. The act authorizes the Commission to seek and impose administrative and civil penalties against persons who violate the act, as prescribed.

Existing law prohibits Members of the Legislature, state, county, district, judicial district, and city officers or employees from being financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Existing law identifies certain remote interests that are not subject to this prohibition and other situations in which an official is not deemed to be financially interested in a contract. Existing law makes a willful violation of this prohibition a crime.

Existing law also makes a person who violates the prohibition against being financially interested in a contract, or who causes another person to violate the prohibition, subject to administrative and civil fines, as specified. Existing law authorizes the Commission to enforce these violations by bringing an administrative or civil action against a person who is subject to the prohibition, as specified, upon written authorization from the district attorney of the county in which the alleged violation

occurred. Existing law authorizes a person who is subject to those prohibitions to request an opinion or advice from the Commission with respect to those prohibitions, as specified.

This bill would establish an additional situation in which an official is not financially interested in a contract as applied to an owner or partner of a firm serving on an advisory board or commission to the contracting agency if the owner or partner recuses himself or herself from all participation in reviewing a project that results from a contract between the firm and the contracting agency.

The Political Reform Act of 1974, an initiative measure, provides that the Legislature may amend the act to further the act's purposes upon a  $\frac{2}{3}$  vote of each house and compliance with specified procedural requirements.

This bill would declare that it furthers the purposes of the act.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1091.5 of the Government Code is
- 2 amended to read:
- 3 1091.5. (a) An officer or employee shall not be deemed to be
- 4 interested in a contract if his or her interest is any of the following:
- 5 (1) The ownership of less than 3 percent of the shares of a
- 6 corporation for profit, provided that the total annual income to him
- 7 or her from dividends, including the value of stock dividends, from
- 8 the corporation does not exceed 5 percent of his or her total annual
- 9 income, and any other payments made to him or her by the
- 10 corporation do not exceed 5 percent of his or her total annual
- 11 income.
- 12 (2) That of an officer in being reimbursed for his or her actual
- 13 and necessary expenses incurred in the performance of official
- 14 duties.
- 15 (3) That of a recipient of public services generally provided by
- 16 the public body or board of which he or she is a member, on the
- 17 same terms and conditions as if he or she were not a member of
- 18 the body or board.
- 19 (4) That of a landlord or tenant of the contracting party if the
- 20 contracting party is the federal government or any federal
- 21 department or agency, this state or an adjoining state, any

1 department or agency of this state or an adjoining state, any county  
2 or city of this state or an adjoining state, or any public corporation  
3 or special, judicial, or other public district of this state or an  
4 adjoining state unless the subject matter of the contract is the  
5 property in which the officer or employee has the interest as  
6 landlord or tenant in which event his or her interest shall be deemed  
7 a remote interest within the meaning of, and subject to, the  
8 provisions of Section 1091.

9 (5) That of a tenant in a public housing authority created  
10 pursuant to Part 2 (commencing with Section 34200) of Division  
11 24 of the Health and Safety Code in which he or she serves as a  
12 member of the board of commissioners of the authority or of a  
13 community development commission created pursuant to Part 1.7  
14 (commencing with Section 34100) of Division 24 of the Health  
15 and Safety Code.

16 (6) That of a spouse of an officer or employee of a public agency  
17 in his or her spouse's employment or officeholding if his or her  
18 spouse's employment or officeholding has existed for at least one  
19 year prior to his or her election or appointment.

20 (7) That of a nonsalaried member of a nonprofit corporation,  
21 provided that this interest is disclosed to the body or board at the  
22 time of the first consideration of the contract, and provided further  
23 that this interest is noted in its official records.

24 (8) That of a noncompensated officer of a nonprofit, tax-exempt  
25 corporation, which, as one of its primary purposes, supports the  
26 functions of the body or board or to which the body or board has  
27 a legal obligation to give particular consideration, and provided  
28 further that this interest is noted in its official records.

29 For purposes of this paragraph, an officer is "noncompensated"  
30 even though he or she receives reimbursement from the nonprofit,  
31 tax-exempt corporation for necessary travel and other actual  
32 expenses incurred in performing the duties of his or her office.

33 (9) That of a person receiving salary, per diem, or reimbursement  
34 for expenses from a government entity, unless the contract directly  
35 involves the department of the government entity that employs the  
36 officer or employee, provided that the interest is disclosed to the  
37 body or board at the time of consideration of the contract, and  
38 provided further that the interest is noted in its official record.

39 (10) That of an attorney of the contracting party or that of an  
40 owner, officer, employee, or agent of a firm which renders, or has

1 rendered, service to the contracting party in the capacity of  
2 stockbroker, insurance agent, insurance broker, real estate agent,  
3 or real estate broker, if these individuals have not received and  
4 will not receive remuneration, consideration, or a commission as  
5 a result of the contract and if these individuals have an ownership  
6 interest of less than 10 percent in the law practice or firm, stock  
7 brokerage firm, insurance firm, or real estate firm.

8 (11) Except as provided in subdivision (b), that of an officer or  
9 employee of, or a person having less than a 10-percent ownership  
10 interest in, a bank, bank holding company, or savings and loan  
11 association with which a party to the contract has a relationship  
12 of borrower, depositor, debtor, or creditor.

13 (12) That of (A) a bona fide nonprofit, tax-exempt corporation  
14 having among its primary purposes the conservation, preservation,  
15 or restoration of park and natural lands or historical resources for  
16 public benefit, which corporation enters into an agreement with a  
17 public agency to provide services related to park and natural lands  
18 or historical resources and which services are found by the public  
19 agency, prior to entering into the agreement or as part of the  
20 agreement, to be necessary to the public interest to plan for,  
21 acquire, protect, conserve, improve, or restore park and natural  
22 lands or historical resources for public purposes and (B) any officer,  
23 director, or employee acting pursuant to the agreement on behalf  
24 of the nonprofit corporation. For purposes of this paragraph,  
25 “agreement” includes contracts and grants, and “park,” “natural  
26 lands,” and “historical resources” shall have the meanings set forth  
27 in subdivisions (d), (g), and (i) of Section 5902 of the Public  
28 Resources Code. Services to be provided to the public agency may  
29 include those studies and related services, acquisitions of property  
30 and property interests, and any activities related to those studies  
31 and acquisitions necessary for the conservation, preservation,  
32 improvement, or restoration of park and natural lands or historical  
33 resources.

34 (13) That of an officer, employee, or member of the Board of  
35 Directors of the California Housing Finance Agency with respect  
36 to a loan product or programs if the officer, employee, or member  
37 participated in the planning, discussions, development, or approval  
38 of the loan product or program and both of the following two  
39 conditions exist:

1 (A) The loan product or program is or may be originated by any  
2 lender approved by the agency.

3 (B) The loan product or program is generally available to  
4 qualifying borrowers on terms and conditions that are substantially  
5 the same for all qualifying borrowers at the time the loan is made.

6 (14) That of a party to a contract for public services entered into  
7 by a special district that requires a person to be a landowner or a  
8 representative of a landowner to serve on the board of which the  
9 officer or employee is a member, on the same terms and conditions  
10 as if he or she were not a member of the body or board. For  
11 purposes of this paragraph, "public services" includes the powers  
12 and purposes generally provided pursuant to provisions of the  
13 Water Code relating to irrigation districts, California water districts,  
14 water storage districts, or reclamation districts.

15 *(15) That of an owner or partner of a firm serving on an*  
16 *advisory board or commission to the contracting agency if the*  
17 *owner or partner recuses himself or herself from all participation*  
18 *in reviewing a project that results from a contract between the*  
19 *firm and the contracting agency.*

20 (b) An officer or employee shall not be deemed to be interested  
21 in a contract made pursuant to competitive bidding under a  
22 procedure established by law if his or her sole interest is that of  
23 an officer, director, or employee of a bank or savings and loan  
24 association with which a party to the contract has the relationship  
25 of borrower or depositor, debtor or creditor.

26 SEC. 2. The Legislature finds and declares that this bill furthers  
27 the purposes of the Political Reform Act of 1974 within the  
28 meaning of subdivision (a) of Section 81012 of the Government  
29 Code.